

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-105

September 19, 2005

ROSEMARIE BERROW

FORMER NON-REGISTERED EMPLOYEE

\* \* \*

**Violated Exchange Rule 477 by failing to comply with a request for written information and a request to testify – Censure and bar until she complies, to become permanent if she does not comply within three months.**

**Appearances:**

For the Division of Enforcement  
Steven Korostoff, Esq.  
Elena Salzman Kindler, Esq.  
Gerard Murphy, Esq.

For the Respondent  
No Appearance

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A Hearing Panel of the New York Stock Exchange, Inc. (the “Exchange”) conducted a hearing on a charge brought by the Exchange’s Division of Enforcement (“Enforcement”) against Rosemarie Berrow (“Respondent”), a former non-registered Operations Manager with the Houston, Texas branch of Morgan Keegan & Company (the “Firm”), a member organization. Respondent was charged with having:

- I. Violated Exchange Rule 477 by failing to comply with one or more written requests by the Exchange for information concerning one or more matters that occurred prior to the termination of her status as an employee of a member organization, and she is, therefore, subject to discipline pursuant to Exchange Rules 476(a) and 477; and
- II. Violated Exchange Rule 477 by failing to comply with one or more written requests by the Exchange that she appear and testify concerning one or more matters that occurred prior to the termination of her status as an employee of a member organization, and she is, therefore, subject to discipline pursuant to Exchange Rules 476(a) and 477.

Respondent did not submit an Answer to the Charge Memorandum. Neither she nor any person on her behalf appeared at the hearing in this matter.

At the hearing, Enforcement moved, pursuant to Exchange Rule 476, to have the facts alleged in the Charge Memorandum deemed admitted since Respondent had failed to file an Answer. The motion was granted on proof of notice of the Charge Memorandum to Respondent, and, on that basis, the Hearing Panel found as follows:

### **Background and Jurisdiction**

1. Respondent was born in February 1958. In or about April 1995, Respondent joined the Firm, a member organization, where she was employed as a non-registered Operations Manager in a Houston, Texas branch.
2. On or about March 18, 2004, the Exchange received from the Firm a Form RE-3 reporting the termination of Respondent on February 2, 2004. The Firm reported in the Form RE-3 and in subsequent correspondence with the Exchange that Respondent had been involved in a check kiting scheme beginning in March of 2003, whereby she embezzled funds from the Firm totaling \$28,869 through three customers' accounts. The Firm reported that the accounts belonged to Respondent and her husband, her daughter, and her son and daughter-in-law.
3. On or about August 31, 2004, Respondent agreed to reimburse the Firm by making payments of approximately \$500 per month for 55 months.
4. Respondent is no longer employed in the securities industry in a capacity known to the Exchange.

### **Failure to Cooperate**

5. By letter dated June 7, 2004 (the "June Letter"), sent to Respondent via certified mail, return receipt requested at her last place of residence as reflected in Exchange records, with a copy sent to her by first class mail at such address, the Division of Enforcement ("Enforcement") notified Respondent that it was investigating the possibility that, while employed at the Firm, she may have engaged in embezzlement from the Firm, as described above.
6. The June Letter, sent certified mail, was received on June 12, 2004. The copy of the letter sent by first class mail was not returned to the Exchange by the U.S. Postal Service.
7. In the June Letter, Enforcement requested that Respondent submit a detailed written explanation of the aforementioned matter to Enforcement no later than June 21, 2004.
8. Enforcement also informed Respondent in the June Letter that her failure to cooperate with the Exchange investigation could result in her being permanently barred from employment with an Exchange member firm or being barred for such period of time as may be determined by an Exchange hearing panel.
9. Respondent did not submit a written explanation as requested in the June Letter.
10. By letter dated July 22, 2004 (the "July Letter"), sent to Respondent via certified mail, return receipt requested at her last place of residence as reflected in Exchange records, with a copy sent to her by first class mail at such address, Enforcement renewed its

request as reflected in Exchange records that Respondent submit a detailed written explanation of the matter to Enforcement.

11. In addition, Enforcement requested in the July Letter that Respondent appear and testify at Enforcement's offices on August 4, 2004 at 10:00 a.m. Enforcement informed Respondent in the July Letter that her failure to appear and testify could result in formal disciplinary action against her for failure to cooperate.
12. The July Letter sent via certified mail was returned to Enforcement by the U.S. Postal Service marked "unclaimed." The copy of the letter sent to Respondent via first class mail was not returned to Enforcement by the U.S. Postal Service.
13. On about August 4, 2004, Enforcement spoke with an attorney representing Respondent, who had contacted Enforcement. In that conversation, Enforcement granted an extension for the taking of Respondent's testimony until September 9, 2004.
14. Respondent did not appear and testify as requested on September 9, 2004.
15. By facsimile dated January 5, 2005, Respondent's attorney advised Enforcement, in relevant part, "I understand that you will be serving Ms. Berrow with a notification letter requiring her to appear and testify about this case. My feeling is that she will not testify, and will accept a failure-to-cooperate charge."
16. By letter dated January 6, 2005 (the "January Letter"), sent to Respondent via certified mail, return receipt requested at her last place of residence as reflected in Exchange records, with a copy sent to her by first class mail at such address, and a copy also sent to her attorney by first class mail, Enforcement again requested that Respondent submit a written explanation of the matter to Enforcement and requested that she appear for testimony at Enforcement's offices on January 20, 2005 at 10:00 a.m. Enforcement again advised Respondent in the January Letter that her failure to comply could result in formal disciplinary action against her.
17. The January Letter sent via certified mail was returned to Enforcement by the U.S. Postal Service marked "unclaimed." Copies of the letters sent to Respondent and her attorney via first class mail were not returned to Enforcement by the U.S. Postal Service.
18. Respondent did not appear and testify as requested on January 20, 2005.
19. To date, Respondent has not complied with Enforcement's requests that she submit a written explanation and that she appear and testify concerning matters that occurred while she was employed with the Firm.

### **DECISION**

The Hearing Panel, by unanimous vote, found Respondent guilty as charged.

**PENALTY**

Enforcement identified three precedents involving a failure to cooperate similar to the failure to the one for which Respondent was found guilty in this case. See In re Eileen A. Keane, Decision 05-25 (N.Y.S.E. Hearing Panel Feb. 15, 2005) (failure to comply with requests for documents and for testimony); In re Deborah Bowman, Decision 03-60 (N.Y.S.E. Hearing Panel Apr. 29, 2003) (failure to testify); In re James W. Baldasare, Decision 00-118 (N.Y.S.E. Hearing Panel July 19, 2000) (same). In each of those cases—whether it involved only a failure to testify or, as in this case, both a failure to testify and a failure to provide written information—the penalty imposed was the same: censure and a bar, with the bar to become permanent if the respondent did not comply within three months. See id.

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Respondent be censured and barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization until she complies with the Exchange's requests with which she has failed to comply. Further, if she does not comply within three months, the bar shall become permanent.

For the Hearing Panel

- Chief Hearing Officer
- Panelists: Anthony Prestia  
Larry Youell